IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 885 of 2003.

Decided on: 25.05.2007.

Sanjay Kumar.

… … … Petitioner.

Versus

State Bank of India & Others.

… … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting? Yes.

For the petitioner: **Pt. Om Parkash Sharma, Advocate.**

For the Respondents: **Mr. K.D. Sood, Advocate.**

Rajiv Sharma, Judge (Oral):

The brief facts necessary for adjudication of this petition are that the petitioner's father died in harnesses 20.6.1999. The petitioner's mother forwarded an application to the Branch Manager, Khaira seeking appointment for the petitioner on compassionate basis. The case was forwarded by the Branch Manager, Khaira to the Deputy General Manager, Zonal Office, State Bank of India, Shimla. The petitioner's mother made a representation to the Deputy General Manager, Zonal Office, State

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Whether reporters of local papers may be allowed to see the judgment? Yes.

Bank of India also vide Annexure P-1. The reminder was sent by the petitioner's mother on 26.12.2002 seeking compassionate appointment for her son. Shri Jai Chand, deceased has left behind widow, one son and four daughters.

The respondents-Bank has filed the reply and the gist of the same is that the petitioner is not entitled to compassionate appointment as mother of the petitioner had received a total sum of Rs.2,80,297/-, (i.e. Rs.1,73,633/- as provident fund and Rs.1,06,664/- as gratuity), out of which Rs.34,000/- was recovered by the Bank as consumer loan availed by the deceased. The respondents in the reply have also averred that the petitioner's mother had deposited a sum of Rs.2,00,000/- as Special Term Deposit Receipt with the State Bank of India, Khaira Branch and Rs.1,700/- is the interest accruing to the mother of the petitioner per month. The Bank had further averred that the petitioner's mother is getting pension of Rs.3064/- from the Bank and the deceased had 10 marlas of land on which he had built a house worth Rs.1,50,000/-.

Pt. Om Parkash Sharma appearing on behalf of the petitioner had argued that the case of the petitioner for compassionate appointment has not been considered in just and fair manner. Mr. Sharma further stated that the letter dated 12.10.2000 is not a speaking order. Mr. Kapil Dev had supported the letter dated 12.10.2000.

I have heard the parties and perused the record.

The petitioner's case for compassionate appointment has been rejected on 12.10.2000 without a speaking order. The bank had filed the copy of revised Scheme for appointment on compassionate grounds, dated 19th June, 2002, but the case of the petitioner stood rejected on 12.10.2000. The reasons assigned in the reply for not considering the case of the petitioner for compassionate appointment, are not reflected in communication dated 12.10.2000. The petitioner's mother had submitted the application in the year 1999 which was routed through the Branch Manager, Khaira. The representation and the reminders made by the petitioner's mother vide Annexures P-1 and P-2 had not been addressed by the Bank at all. The petitioner's mother had received only a sum of Rs.2,80,297/-, i.e. Rs.1,73,633/- as provident fund and Rs.1,06,664/- gratuity out of which Rs.34,000/- was recovered by the Bank as consumer loan availed by the deceased, meaning thereby that the petitioner's mother had received only a sum of about Rs.2.50 lacs. The Bank could not take into consideration the retrial benefits for denying the compassionate appointment to the petitioner. The Bank had also wrongly taken into consideration the amount which the petitioner's mother had deposited towards Special Term Deposit Receipt with the State Bank of India and meagre pension of Rs.3064/- while denying the appointment to the petitioner on compassionate basis. The deceased has built a small house worth Rs.1,50,000/- which also seems to be a guess work. The deceased has left behind a widow, a son and four daughters.

The question whether the retiral benefits can be taken into consideration while considering the case of a candidate for appointment on compassionate grounds is no more res-integra in view of the law laid down by the Hon'ble Supreme Court in **Balbir Kaur and Another Versus Steel Authority of India Ltd. and Others, (2000) 6 SCC 493.** Their Lordships of the Hon'ble Supreme Court have held as under:-

> **"Mr. Bhasme, learned advocate appearing for Steel Authority contended that the Family Benefit Scheme was introduced on 21-11-1992 and the salient features of the Scheme were to the effect that the family being unable to obtain regular salary from the management could avail of the Scheme by depositing the lump sum provident fund and gratuity amount with the Company in lieu of which the management would make monthly payment equivalent to the basic pay with dearness allowance last drawn, which payment would continue till the normal date of superannuation of the employee in question. Mr. Bhasme further contended that adaptation of this Family Benefit Scheme was meant to provide an assured or regular income per month, while the bulk amount deposited by way of provident fund and gratuity with the management remained intact. Mr. Bhasme contended that consequently on deposits as above with the management, the employee's family could avail of pay up to normal date of superannuation on the footing that the employee though not actually working but notionally continued to work till the normal date of superannuation and such a scheme in fact stands at a much better footing and much more beneficial**

to an employee or a deceased employee. Apparently these considerations weighed with the High Court and the latter thus proceeded on the basis that by reason of adaptation of a Family Benefit Scheme by the employees' union, question of any departure therefrom or any compassionate appointment does not and cannot arise. But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family – this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation.

It is significant to note that the Employees' Provident Fund and Miscellaneous Provisions Act of 1952 is a beneficial piece of legislation and can amply be described as a social security statute, the object of which is to ensure better future of the employee concerned on his retirement and for the benefit of the dependants in case of his earlier death. As regards the provisions of the Payment of Gratuity Act, 1972 (as amended from time to time) it is no longer in the realm of charity but a

statutory right provided in favour of the employee. Section 4 of the Act is of some significance and as such the same is set out hereinbelow:

> **"4. Payment of gratuity.-(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than fiver years,-**
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> **(a) on his superannuation, or**
>
> **(b) on his retirement or resignation, or**
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> **(c) on his death or disablement due to accident or disease:**
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> **Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:**
>
> **Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed until such minor attains majority."**

It is upon consideration of the above-noted provisions of Section 4, it was contended that question of compulsory depositing of the gratuity amount does not and cannot arise. We shall come back to the deposit of the provident fund but as

regards the gratuity amount, be it noted that there is a mandate of the statute that gratuity is to be paid to the employee on his retirement or to his dependants in the event of his early death – the introduction of the Family Pension Scheme by which the employee is compelled to deposit the gratuity amount, as a matter of fact runs counter to this beneficial piece of legislation (Act of 1972). The statutory mandate is unequivocal and unambiguous in nature and runs to the effect that the gratuity is payable to the heirs of the nominees of the employees concerned but by the introduction of the Family Pension Scheme, this mandate stands violated and as such the same cannot but be termed to be illegal in nature. We do find some substance in the contention as raised, a mandatory statutory obligation cannot be trifled with by adaptation of a method which runs counter to the statute. It does not take long to appreciate the purpose for which this particular Family Pension Scheme has been introduced by deposit of the provident fund and the gratuity amount and we are not expressing any opinion in regard thereto but the fact remains that statutory obligation cannot be left high and dry on the whims of the employer irrespective of the factum of the employer being an authority within the meaning of Article 12 or not.

Adverting to the provident fund, be it noted that the same is payable to an employee under the provisions of a statute and this statutory obligation cannot possibly be deferred in the event of an untimely death of a worker or an employee. As noticed above, the family needs the money in

lump sum and availability of this amount is the only insulating factor to such a grief-stricken family. The amount is payable in one lump-sum and as a matter of fact it acts as a buffer to the retirement of or on the death of an employee. Situations are not difficult to conceive when the family needs some lump-sum amount but in the event of deposit of the same with the employer, the heirs of the deceased employee could be put into the same problems of realities of life, even though, if this money would have been made available to them the situation would have been otherwise."

Similarly, the Hon'ble Supreme Court has held in **Govind Prakash Verma Versus Life Insurance Corporation of India and Others, (2005) 10 SCC 289** that the compassionate appointment cannot be refused on ground that any member of family has received retiral benefits. Their Lordships have held as under:-

"In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on

the ground that any member of the family received the amounts admissible under the Rules."

The upshot of the above discussion is that the case of the petitioner for compassionate appointment has been rejected in a most arbitrary manner. The Annexure R-2, dated 12.10.2000 is not a speaking order. The reasons assigned in the reply are not sufficient to deny the petitioner compassionate appointment after the death of his father in the year 1999. The Bank has wrongly taken into consideration while refusing the compassionate appointment to the petitioner the retiral benefits available to the mother of the petitioner as well as the amount deposited by way of Special Term Deposit Receipt and meagre pension of Rs.3064/-.

Accordingly, this petition is allowed with costs quantified at Rs.5500/-. The respondents are directed to re-consider the case of the petitioner in view of the law laid down by the Hon'ble Supreme Court in above cited cases for compassionate appointment within a period of eight weeks from the receipt of the certified copy of judgment.

(Rajiv Sharma)
Judge

May 25, 2007.
(sck)